

# New Pennsylvania RACT Rule anticipated in 2014

By Roy Rakiewicz

## Introduction

The Pennsylvania Department of Environmental Protection has been contemplating a “new” Reasonably Available Control Technology (RACT 2) rule for major sources of nitrogen oxides (NOX) and volatile organic compounds (VOC) since mid-2012. The draft rule cleared the Environmental Quality Board in late 2013 and is expected to be proposed during the first quarter of 2014. This is a significant rulemaking that will impact many, if not all major sources of NOX and VOC in Pennsylvania.

## History

The requirement for RACT 2 was triggered by the 2008 revised national ambient air quality standard (NAAQS) for ozone, in accordance with the Clean Air Act. VOC and NOX are precursors to the formation of ozone. The Pennsylvania Air Quality Technical Advisory Committee originally considered DEP's proposed RACT 2 regulatory requirements during its September 12, 2012 meeting. AQTAC did not provide approval to send the original draft proposal of the RACT 2 regulation to the EQB at that time, citing several concerns regarding submittal and compliance deadlines, the expected number of facilities that would be affected, and the anticipated number of “case-by-case” RACT analyses that would be required. DEP staff then presented a revised RACT 2 draft rule to AQTAC during the February 4, 2013 meeting. After discussion, AQTAC approved to move the draft RACT 2 rule to the EQB for consideration as a proposed regulatory revision. The EQB considered the draft RACT 2 rule during its November 17, 2013 meeting and approved the draft rule for publication in the Pennsylvania Bulletin for public comment. Please note that at the time this column was prepared, the proposed RACT 2 rule had not yet been published in the Pennsylvania Bulletin.

## Applicability

The RACT 2 requirements would apply to major NOX or VOC emitting facilities that were in existence on or before July 20, 2012 and would affect emissions units at such facilities for which no RACT requirement has been established. By virtue of its location in the Northeast Ozone Transport Region, the major source threshold for VOC and NOX in most of Pennsylvania is 50 and 100 tons per year, respectively. The major source threshold for both NOX and VOC in the five county Philadelphia region is 25 tons per year due to the original ozone NAAQS designation as severe nonattainment. The term “has been established” above pertains to specific limits as



defined in the Pennsylvania rules under “Standards for Sources” at 25 Pa. Code:

- §§129.51-129.52c (surface coating processes)
- §§129.54-129.69 (petroleum refineries, VOC storage tanks, bulk gasoline terminals and plants, degreasing operations, graphic arts systems, pharmaceutical production, and tire production)
- §§129.71-129.73 (synthetic organic chemical/polymer manufacturing fugitive emissions, manufacture of surface active agents, and aerospace manufacturing and rework)
- §129.77 (use or application of adhesives, sealants, primers and solvents)
- §§129.101-129.107 (wood furniture manufacturing)
- §§129.301-129.310 (glass melting furnaces)

The proposed RACT 2 requirements would supersede the requirements of a RACT permit issued under 25 Pa. Code §§129.91-129.95 (i.e., case-by-case RACT), except in cases where an existing RACT permit specifies more stringent requirements. Conversely, the draft proposed RACT 2 requirements would not supersede the requirements of 25 Pa. Code §§129.201-129.205 or §§145.111-145.113, except where the proposed RACT 2 requirements are more stringent. The RACT 2 requirements would also apply to facilities that become major NOX or VOC emitting facilities after July 20, 2012 as a result of a modification or the addition of a new source and would affect emissions units at such facilities for which no RACT requirement has been established.

## RACT 2 Requirements

The proposed RACT 2 rule differs significantly from its predecessor RACT rule (i.e., 25 Pa. Code §§129.91-129.95) as it defines specific RACT limits for many types of emissions units. In addition to

“presumptive” RACT requirements for certain combustion units, the proposed rule includes defined numerical NOX RACT standards for specific sources including combustion turbines, stationary internal combustion engines, combustion units greater than 50 MMBtu/hr, and cement kilns. RACT 2 also includes defined NOX RACT standards for municipal waste landfills and municipal waste combustors. Specific RACT 2 standards are presented in terms that are reflective of the source (e.g., combustion units—lb NOX/MMBtu, combustion turbines—ppmvd, internal combustion engines—grams NOX/bhp-hr, etc.). Presumptive VOC RACT for combustion sources is generally the use of “good engineering practices.” The VOC emission limits of 25 Pa. Code §§129.51-129.52c, 129.54-129.69, 129.71-129.73, 129.77, 129.101-129.107 are presumptive limits for RACT 2. All other sources of VOC at major VOC facilities will likely need to go through a case-by-case RACT analyses. Similar to previous case-by-case RACT analyses, a key piece of a RACT 2 case-by-case analysis will be cost effectiveness, expressed on a dollar per ton of pollutant removed basis. All unit specific RACT proposals would be due six months after the effective date of the RACT 2 rule, with compliance for all units required one year after the effective date of the RACT 2 rule. The proposed RACT 2 rule would allow subject sources that need to install controls to meet either the presumptive or approved alternative standards to petition for an extension of compliance for up to three years after the effective date of the regulation.

## Compliance Requirements

Prescriptive compliance demonstration and recordkeeping requirements are specified in the proposed RACT 2 rule and address continuous

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emission monitoring systems where applicable, and emission testing requirements. Compliance demonstrations are generally required within one year of rule finalization or within one year of becoming a major NOX or VOC source, with provisions for waivers under certain circumstances.

An averaging provision is included in the rule that would allow a facility that cannot meet an applicable NOX RACT emission limit to meet the limit by averaging NOX emissions on either a facility-wide or system-wide basis using a 30-day rolling average. System-wide emissions averaging must be among sources under common control of the same owner or operator in Pennsylvania. However, there is a trade-off for site or system emissions averaging as the 30-day rolling average cannot be greater than 90 percent of the sum of the NOX emissions if each individual source included in the average complied with the applicable NOX RACT requirement or emission limitation.

### Impact

This is a regulatory proposal that potentially affected facilities should thoroughly review and understand upon publication or sooner. A first review of the proposed regulations indicates that control technology is available to achieve the proposed RACT emission standards, but in some cases these emission standards may be more stringent than previously established case-by-case RACT emission limits. In specific instances, some older boilers, even those that installed low-NOX burners in the late 1990s and early 2000s, will not likely meet the proposed presumptive NOX RACT limits. If your sources fall into this type of situation and you cannot make use of the NOX RACT averaging provisions, you will have the option to develop a case-by-case RACT analysis. Additionally, if you have emission units that will be subject to the VOC RACT limits that are not combustion related or are not already covered by the existing Chapter 129 VOC emission standards, you should be prepared to conduct a case-by-case RACT evaluation and propose an appropriate VOC RACT limit for such sources.

### Recommendations

The RACT 2 regulations will impact all major NOX and VOC sources in Pennsylvania and many of those impacts could be significant. Potentially affected facilities should review and understand how the rule, as proposed, could impact their operations. Based on that review, facilities should consider preparing individual comments in response to the proposal for submittal during the upcoming public comment period and begin to strategically think about compliance strategies in anticipation of a final RACT 2 rule by the end of 2014. ♦

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## Up close with... Jeffrey J. Vrabel



Jeffrey J. Vrabel is the leader of ParenteBeard's manufacturing, distribution and technology industry practice and is a partner in the audit and accounting services group. Jeff is also a member of ParenteBeard's board of directors. He is based in the Central Pennsylvania Region and its York office.

Jeff has over 32 years of experience in public accounting working with private and public, middle market, entrepreneurial and high growth companies ranging in size from early stage development to multinational organizations. His responsibilities include coordinating and reviewing audit and accounting services and consultation on complex accounting and reporting matters. Also, Jeff's responsibilities include leading client engagement teams that deliver quality service and value to clients through understanding their business issues, identifying solutions and utilizing firm resources.

Jeff has worked with clients in the manufacturing, distribution, technology, industrial products, consumer products, real estate and other industries, including private equity and venture capital-backed companies. He has significant experience working with clients executing merger, acquisition and financing transactions. Jeff has been active in numerous programs and activities in the region focused on promoting and recognizing entrepreneurship.

Prior to joining ParenteBeard, Jeff was with Ernst & Young for more than 23 years, including over ten years as a partner, serving the central and eastern Pennsylvania regions.

### What key role(s) do you play at ParenteBeard?

As a partner and the manufacturing, distribution and technology practice leader at ParenteBeard, my responsibilities include delivering value to our clients as part of our Client Service Commitment, growing the firm and providing future advancement opportunities for our team. This includes serving clients directly as a partner and overseeing the firm's resources to assure that the services we provide to our clients are the highest quality possible. My role requires a key understanding of our clients' goals and objectives so that we can identify and deliver solutions to our clients. I also recruit top-notch professionals for our firm and work with the current team to address the ever-changing professional and regulatory standards impacting the industries we serve. These efforts also develop their leadership abilities to help them continue advancing in the firm. I also serve on our firm's board of directors and committees and am dedicated to executing our strategic plan and initiatives, which impact my fellow partners and other team members. Additionally, I'm active in community organizations as part of our commitment to the communities where we live and work.

### What entrepreneurial advice would you give to someone looking to invest and create jobs in Pennsylvania?

Throughout my career, I have been fortunate to interact with many extremely successful entrepreneurial leaders, and I continue to be impressed by their creativity, commitment and unwavering determination to achieve their goals. Often when discussing the challenges they have overcome, these leaders have referenced a primary element to their success as having created a clear and focused business plan, identified the team skills necessary to move that plan forward and maintained a positive and dedicated approach in all aspects of its execution. I have also been involved in a number of programs and activities that recognize and encourage entrepreneurship, and I believe that entrepreneurs need to understand the vast support network available to them in Pennsylvania.

My advice to entrepreneurs and investors considering establishing or expanding their presence in Pennsylvania would include developing a working knowledge of the state, regional and local organizations and resources readily available to them; evaluating the benefits those resources offer; and seeking ways to maximize the value and positive impact those resources can have on the potential success of their ventures. Examples of such resources include Team PA, the Governor's Action Team, the Department of Community and Economic Development and local and regional economic development organizations and chambers of commerce.

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